

The opinion in support of the decision being entered today was not written for publication in a law journal and is not binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte KENJI NAGAI

Appeal No. 2005-2437
Application No. 09/682,642

NOTIFICATION OF NON-COMPLIANCE REGARDING ORAL HEARING

The following Order of Non-Compliance of the Request for Oral Hearing filed April 22, 2005, supersedes an earlier Order of Non-Compliance that was mistakenly mailed to an incorrect address. The period for response is being reset to correspond to this current Order being Faxed on August 29, 2005.

Appellant filed a paper styled "Appellant's Request for Oral Hearing" on April 22, 2005, in relation to the present application. However, the paper contains both a oral hearing request and a request to remand the application back to the examiner for additional issues.

As per 37 CFR § 41.47(b) which was in effect at the time of the filing of the Request, a request for an oral hearing must be filed in a separate paper.¹

Since appellant's request for oral hearing was not filed in a separate paper as required by 37 CFR § 41.47(b), a request for an oral hearing cannot be granted. However, the \$500 fee for the oral hearing which was submitted with the Request, is refundable under 37 CFR § 1.26.

If appellant desires the \$500 fee to be refunded, a request for refund should be filed as soon as possible.

If appellant still desires an oral hearing, a petition under 37 CFR § 1.183 must be filed within two weeks of the mail date of this notice. Such a petition must include:

- (1) a request to suspend the separate paper requirement of 37 CFR § 41.47(b),
- (2) a showing of facts to establish that an extraordinary situation exists and that justice requires the separate paper requirement of 37 CFR § 41.47(b) be suspended or waived, and

¹ 37 CFR § 41.47(b) provides in pertinent part:

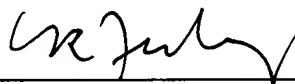
[i]f appellant desires an oral hearing, appellant must file, as a separate paper, captioned "REQUEST FOR ORAL HEARING," a written request for such hearing accompanied by the fee set forth in § 41.20(b)(3) within two months from the date of the examiner's answer or supplemental examiner's answer . (emphasis added)

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(3) be accompanied by the petition fee set forth in 37 CFR § 1.17. This two-week time period for filing a petition under 37 CFR § 1.183 is not extendable under 37 CFR § 1.136(a)(1)(iv). The failure to timely file a petition under 37 CFR § 1.183 will result in the appeal being decided without an oral hearing (i.e., On Brief).²

BOARD OF PATENT APPEALS
AND INTERFERENCES

By:



CRAIG FEINBERG
Program and Resource Administrator
(571) 272-9797

FAXED ON: August 29, 2005

FAX NO.: 949-760-9532

CF/vsh

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² If appellants decide not to file a petition under 37 CFR § 1.183, the Board of Patent Appeals and Interferences would appreciate written notice thereof so that the appeal can proceed On Brief as expeditiously as possible.